

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SUSIE GUTIERREZ,

Plaintiff,

v.

Cause No.

**FABIAN ORNELAS and
CHEVRON U.S.A. INC.,**

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Chevron U.S.A. Inc. (“Chevron”) removes the above-captioned action from the Fifth Judicial District Court for the State of New Mexico, County of Lea, to the United States District Court for the District of New Mexico.

BACKGROUND

1. On July 27, 2001, Plaintiff Susie Gutierrez (“Gutierrez”) filed a civil complaint against Chevron in the Fourth Judicial District Court for the State of New Mexico, styled as *Susie Gutierrez v. Fabian Ornelas and Chevron U.S.A. Inc.*, Case No. D-506-CV-2021-00686. A true and correct copy of the Complaint is attached here as Exhibit A.
2. On July 28, 2021, Gutierrez served its Complaint on Chevron.
3. On August 25, 2021, Chevron served its Answer and Affirmative Defenses on Gutierrez.
4. On September 3, 2021, Chevron served discovery requests on Gutierrez.

5. On October 15, 2021, Gutierrez responded to Chevron's discovery requests, including a request for admission ("RFA") that asked Gutierrez to admit she is seeking more than \$75,000 in damages. See Exhibit B, Response to RFA 1 and corresponding certificate of service.

6. This case involves Plaintiff's personal injury claims associated with a motor vehicle accident. Exhibit A.

7. As set forth more fully below, this case is properly removed to this Court under U.S.C. § 1441 because Chevron has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

DEFENDANT CHEVRON HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

8. Gutierrez's Complaint did not quantify the amount of damages she is seeking.

9. Gutierrez has since admitted that she is seeking more than \$75,000 in damages. Her admission was made in responses to discovery that Gutierrez served on Friday, October 15, 2021. Ex. B. Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

10. Pursuant to 28 U.S.C. § 1446(a) and D.N.M. LR-Civ. 81.1(a), copies of all process, pleadings, orders, and other papers served upon Chevron in the state court action are attached as Exhibit A.

11. Venue is proper in this Court under 28 U.S.C. § 1441(a) because it is the District Court and division embracing the place where the action is pending.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between citizens of different states.

13. No previous application has been made for the relief requested herein.

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be served upon counsel for Gutierrez and a copy will be filed with the Clerk of the Court of the Fifth Judicial District Court for the State of New Mexico.

THERE IS COMPLETE DIVERSITY OF CITIZENSHIP

15. Plaintiff Gutierrez is a resident of the City of Hobbs, Lea County, NM and is a citizen of the State of New Mexico. *See* Complaint at ¶ 1.

16. Defendant Chevron is incorporated under the laws of the Commonwealth of Pennsylvania and its principal place of business is in San Ramon, Contra Costa County, State of California. It is not a citizen of New Mexico. *See* Complaint at ¶ 3.

17. Defendant Ornelas is a resident of the City of Midland, Midland County, Texas and is a citizen of the State of Texas. *See* Complaint at ¶ 2.

18. Because Gutierrez is a citizen of New Mexico, and Chevron and Ornelas are not citizens of New Mexico, complete diversity exists between the parties to this action. *See* 28 U.S.C. § 1332(c)(1).

THE AMOUNT IN CONTROVERSY IS SATISFIED

19. To confer subject matter jurisdiction on this Court based on subject matter jurisdiction, the amount in controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

20. Gutierrez's discovery responses establish that she is seeking more than \$75,000 in damages. Ex. B.

21. The amount that Gutierrez has placed in controversy plainly exceeds \$75,000.

CONCLUSION

In this case the parties are completely diverse and the amount in controversy exceeds \$75,000. Accordingly, this case is removable under 28 U.S.C. § 1441.

Respectfully submitted,

MODRALL SPERLING ROEHL HARRIS & SISK, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2021, I filed the foregoing electronically through the CM/ECF system and via email, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the notice of electronic filing.

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